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2 the opportunity to proceed into this competitive field, we
3 might be able to make an application to 405 area and not
4 918.

5 Again I feel that if competition is there,
6 and, yes, it will create more jobs in the State of Oklahoma,
7 as all the companies will at that point, so why not allow
8 Southwestern Bell to be able to create some of those to help
9 Oklahoma? And, actually, that does trickle down and help
10 our rural communities, too.

11 We would also like to note that when and if
12 Southwestern Bell is allowed this opportunity, the
13 Commissioners will remain or at least mandate that these
14 options will go to rural communities. So many times
15 metropolitan areas receive these options. And I understand
16 that sometimes it has to be rolled out into those areas
17 first. Hopefully, there will be mandates on time
18 restrictions of when it should be presented to our rural
19 communities, because we are in those rural communities
20 trying to survive. And we need some of those benefits that
21 is given to the remainder of our state.

22 An example was used that the best way to know
23 that gas can - - that - - the best way to know that gas can
24 flow is to see it happen. Well, the best way to get options
25 presented and to know that we can be on a level playing
field is actually allow these companies to get into that

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2 playing field and to be able to just get with it so that we
3 can know that there are things out there that can be
4 presented to us on that level playing field.

5 So in summary, I guess that is what I'm
6 saying. I am for the Commission agreeing to recommend that
7 Southwestern Bell's proposal can go to the FCC, because I
8 feel like that puts us into a better position to have an
9 opportunity to be on that level playing field with everyone
10 else. Thank you very much.

11 CHAIRMAN GRAVES: Thank you, Ms. Duff.

12 COMMISSIONER APPLE: I just have one thought.
13 Ms. Powell? Ms. Powell?

14 MS. POWELL: Yes, sir.

15 COMMISSIONER APPLE: You made a statement
16 that you were representing the Francis-Tuttle Vo-Tech, is
17 that correct?

18 MS. POWELL: Yes, sir.

19 COMMISSIONER APPLE: Representing the
20 position of the administration and the board in an official
21 capacity?

22 MS. POWELL: Yes. Yes.

23 COMMISSIONER APPLE: I wanted to be sure I
24 understood that. Thank you.

25 CHAIRMAN GRAVES: Okay. At this point we
will recess - -

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2 MR. BATTERSHELL: Excuse me.

3 CHAIRMAN GRAVES: Yes, sir?

4 MR. BATTERSHELL: May I go ahead and speak
5 also? I didn't know I had to sign up. This is the first
6 time I have been here.

7 CHAIRMAN GRAVE: Sure. Please come forward.
8 You just have to state your name and affiliation for the
9 record when you get up here.

10 MR. BATTERSHELL: Thank you very much.

11 CHAIRMAN GRAVES: Sure.

12 MR. BATTERSHELL: My name is David
13 Battershell. It's B-A-T-T-E-R-S-H-E-L-L. I work for
14 Medical Arts Laboratory. I'm the network administrator.
15 And I found out about this through the Internet.

16 CHAIRMAN GRAVES: And we hope that was at our
17 home page.

18 MR. BATTERSHELL: As a matter of fact, I did
19 hit that this morning.

20 CHAIRMAN GRAVES: Good.

21 MR. BATTERSHELL: I would like to say to you,
22 the Commission, as an Oklahoma customer I would urge you to
23 approve the proposal to allow Southwestern Bell to become in
24 the long distance market and become a carrier. And vice
25 versa, I would like you to allow others in the local
exchange markets. Basically, I'm not for Southwestern Bell,

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2 AT&T, Sprint. I don't care. I just want competition.

3 Competition is a good thing.. It is good for Oklahoma
4 business. It is good for me as a citizen. One-stop
5 shopping is fine. That is okay. But price is the bottom
6 line. For me at home, I have got a limited budget. And,
7 obviously, you know how that works.

8 Medical Arts Laboratory is a business. We
9 operate in Oklahoma and the surrounding states. We have
10 been a business that has benefited majorly from the local
11 area calling zone that you have opened up.

12 I want to thank you for that also for me at
13 home, because I live in Meeker, and I'm just right on the
14 edge. And that has helped me out as far as, you know,
15 cutting my costs on long distance.

16 COMMISSIONER APPLE: Don't tell your friends
17 in Prague, would you?

18 MR. BATTERSHELL: As a matter of fact, my
19 mother used to work at the Prague Hospital. And do you know
20 how that goes?

21 COMMISSIONER APPLE: Just emphasizing that
22 not everyone has that benefit. All right?

23 MR. BATTERSHELL: But for me personally, I
24 appreciate it. I would like to ask you to help me again by
25 allowing competition to take place in Oklahoma. We have
been hearing rumblings about this competition ever since the

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2 Telecommunications Act passed. Frankly, as a business, we
3 are ready. People come in, we are going to be able to give
4 you local service. We're going to be able to provide you
5 long distance. Well, now is the time.

6 We being a business in competition, we have
7 got people coming in from other markets that are coming in
8 and trying to take our business. We need every dollar we
9 can get. This is one way we can help.

10 I'm not familiar with the Track A, the Track
11 B, all I know is service. Southwestern Bell provides me,
12 the customer, with good service. As an Oklahoma business
13 through competition in the long distance service, Medical
14 Arts Laboratory, where I work, has saved \$4,000 a month
15 because long distance carriers could come in and compete for
16 my business. I would like this chance to be able to pick
17 local service. I would like to be able to give Southwestern
18 Bell a chance. I don't know that I will go with them. I
19 may, I may not. It doesn't matter to me. I just want that
20 opportunity to have that choice. Thank you very much.

21 CHAIRMAN GRAVES: Thank you, sir.

22 We will take a brief recess and return at a
23 quarter 'til.

24 (Whereupon, Public Comment was ended.)

25 (Whereupon, a brief recess was had, after
which the following occurred:)

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2 CHAIRMAN GRAVES: We will go back on the
3 record and recognize Ms. Jenkins.

4 We might - - I'm getting hungry looking at
5 that ice cream sundae. Could we - -

6 You may proceed.

7 MS. JENKINS: Thank you, Mr. Chairman.
8 Members of the Commission, on behalf of Sprint
9 Communications Company, L.P., I am Martha Jenkins. And in
10 an effort to keep my comments brief, let me say that Sprint
11 concurs in part with the comments made herein today by AT&T.
12 In fact, I thought AT&T's Counsel did a very good job of
13 walking you through the various relevant issues, the
14 requirements of the competitive checklist, and also the
15 concerns raised by Southwestern Bell's eleventh hour offer
16 to meet the checklist. Sprint shares in those concerns, and
17 so there is no need for me at this point to take any
18 additional time rehashing those arguments.

19 Let me say also that Sprint supports the
20 recommendations made by the Administrative Law Judge. I
21 think also that Judge Goldfield did a very thorough job of
22 reviewing the affidavits, the comments, and the testimony
23 filed in this case. And, as evidenced by the lengthy
24 exhibit list produced in this docket last week, this
25 Commission now has before it a complete record concerning
both the state of local competition in Oklahoma and the

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2 extent to which Southwestern Bell has not met the
3 competitive checklist. One simple truth emerges from this
4 voluminous record, and that is it is far too early for
5 Southwestern Bell to be permitted to enter the interLATA
6 market in Oklahoma.

7 I want to make just two quick points. The
8 first of which is, Commissioner Graves, you raised concerns
9 about the possibility of a stale record. Let me say that
10 Sprint shares a similar concern. Not the same one, but one
11 very similar, and that is at the other end of the spectrum.
12 That is that this Commission must take great care to report
13 to the FCC the way things are today, not the way that this
14 Commission believes they will be, nor the way that
15 Southwestern Bell promises that they will be.

16 My second point is that this Commission has
17 on many occasions been engaged in a tremendous and laudable
18 effort to clear the way for competitive local exchange
19 competition in this state. However, setting the stage for
20 competition and actual competition are two different
21 things. But please understand that neither the absence of
22 competition in the Oklahoma local exchange market, nor
23 Southwestern Bell's failure to meet the competitive
24 checklist, is in any way a mark against this Commission.
25 This Commission should cast nothing but - - should not cast
anything but its most critical eye at Southwestern Bell's

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2 claims in this proceeding. The burden of demonstrating the
3 requirements in the Act have - - that the Act have been
4 satisfied rest squarely on Southwestern Bell. And, as Judge
5 Goldfield appropriately and accurately concluded,
6 Southwestern Bell has not met that burden. This Commission
7 should not find otherwise. We also seek affirmance of the
8 Administrative Law Judge's report and recommendations.
9 Thank you.

10 CHAIRMAN GRAVES: Where is Sprint in the
11 process of interconnecting?

12 MS. JENKINS: I knew you would ask that. Let
13 me say that it is our intention, and I believe that this
14 information was submitted to the Commission Staff just last
15 week, we hope to be in the local exchange market as a
16 reseller as early as 1998. I can't be any more specific
17 than that. And it is simply not because I am being evasive,
18 but because I'm not a part of the implementation team.

19 CHAIRMAN GRAVES: Well, I understand that. I
20 was thinking more in terms of you have a signed
21 interconnection agreement?

22 MS. JENKINS: That is correct. And it was
23 approved.

24 CHAIRMAN GRAVES: And you are in the process
25 of engineering the networks?

MS. JENKINS: Yes. That's correct. And even

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2 prior to the filing of that interconnection agreement and
3 the approval of that contract, we have an implementation
4 team that has been meeting with Southwestern Bell in an
5 effort to see that that contract is implemented.

6 CHAIRMAN GRAVES: To your knowledge have you
7 experienced similar - - have you shared similar experiences
8 with Southwestern Bell that have been alluded to today?

9 MS. JENKINS: Yes, we have. And I regret
10 that I am not - - that I have not been privy to those
11 implementation meetings and that I cannot speak more fully
12 regarding the impediments that we have encountered in an
13 effort to implement that contract. But I will say that our
14 work with Southwestern Bell has been in progress and will
15 continue to be so, because we want very much to get into the
16 local exchange market in Oklahoma.

17 COMMISSIONER APPLE: Ms. Jenkins, where do
18 you stand in any other states at this point in time? Any
19 more or less? The same strategy elsewhere? Or are you more
20 aggressive in other states than you are in Oklahoma at this
21 time?

22 MS. JENKINS: Not necessarily. We have an
23 interconnection agreement with Southwestern Bell in Kansas,
24 also in Texas, and we may very well, I believe, in Missouri.
25 I can't speak to those states, because I don't - - I'm not
the regulatory attorney responsible for those. And I

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2 believe - - Well, I know with certainty that our
3 interconnection agreement in Kansas has been approved and we
4 are on the same sort of time line with respect to getting
5 into the local market.

6 CHAIRMAN GRAVES: How about California?

7 MS. JENKINS: I cannot speak to that. We
8 don't even handle that state out of our Kansas City office.

9 COMMISSIONER APPLE: Thank you.

10 MS. JENKINS: Thank you very much.

11 VICE CHAIRMAN ANTHONY: Let me ask a question
12 on how you read the ALJ's report, because I understood your
13 comment to be that you were supporting the recommendation of
14 the ALJ?

15 MS. JENKINS: That is correct.

16 VICE CHAIRMAN ANTHONY: All right. He said -
17 - I'm reading from the ALJ's report on page 36. It says,
18 "This recommendation will not address each of the specific
19 checklist items." So he did not - - I know in the body of
20 the report he mentions the fourteen, but he didn't give a
21 ruling or a finding of fact and conclusion of law on each of
22 the fourteen points. But he did find deficiency on some and
23 then stopped at that point. Is that how you read it?

24 And then my question is, to pass the test, do
25 you have to have all of the fourteen points?

MS. JENKINS: It is Sprint's position that

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2 all of the fourteen point checklist must be met and that
3 those points have not been met by Southwestern Bell at this
4 time. It is also Sprint's position that before you can even
5 get to the fourteen point checklist, and I believe that this
6 issue was raised by AT&T's Counsel, there are other
7 threshold issues. And those have yet to be met. We do have
8 the first person in the Oklahoma Land Rush, or the first
9 carrier, I should say, and that is Brooks Fiber. But they
10 have yet to actually be offering telecommunication services
11 over their own facilities to residential customers.

12 So until Southwestern Bell can prove that
13 they are pursuing Track A by interconnecting with other
14 carriers that are actually exchanging telecommunication
15 services across the networks, that test has yet to be met,
16 let alone the fourteen point checklist under the Act.

17 VICE CHAIRMAN ANTHONY: Thank you.

18 MS. JENKINS: Thank you very much.

19 COMMISSIONER APPLE: Let me ask you this
20 question of you, Counselor. This is sort of a hypothetical,
21 theoretical, let's make believe here for a minute.

22 Assuming that you have a good faith offer of
23 interconnection and long distance service to a company that
24 might be in a good faith effort wanting to get in that
25 business, my analogy is, you like the metaphor, so do I,
that I have a VCR at my house. I cannot set the clock on

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2 it. Am I to blame for that, or is the maker?

3 Now my comparison here is we are not always
4 going to have the same kind of technological changes that
5 are going to be fit. I mean, this is not always going to be
6 a hand-in-glove thing. So there is going to be some
7 learning curve on this. But who should be responsible for
8 the learning curve, is my question.

9 MS. JENKINS: I am not going to thrust the
10 necessity of that, of learning those sorts of things,
11 entirely upon Southwestern Bell. I would agree with you
12 that it is equally the VCR manufacturer's responsibility to
13 produce the documentation that allows you with some
14 simplicity to understand your VCR and be able to set that
15 clock.

16 CHAIRMAN GRAVES: Another - - "Some
17 simplicity." Another relative term.

18 MS. JENKINS: You are right. You are
19 right.

20 COMMISSIONER APPLE: Oh, the manual.

21 MS. JENKINS: So in that regard Sprint
22 equally needs to come to the table, meet with Southwestern
23 Bell, make its requirements and definitions clear so that
24 there is a meeting of the minds, so to speak, so that
25 Southwestern Bell can produce that which Sprint is
requesting. And I think that Sprint is required to learn

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2 how to set the clock on the VCR once the ability to do that
3 is made to Sprint. I think there is an equal partnership
4 there. It is not entirely Southwestern Bell, it is not
5 entirely Sprint.

6 COMMISSIONER APPLE: Good answer. Thank you.

7 MS. JENKINS: Thank you.

8 CHAIRMAN GRAVES: Mr. Morris.

9 MR. MORRIS: Good afternoon, Commissioners.
10 I'm Steve Morris, appearing on behalf of MCI. I believe
11 AT&T and Sprint covered the issues quite well. And I won't
12 repeat them here. I will, however, note that I am amazed at
13 the offer of Southwestern Bell to first, after having
14 resisted discovery, after having not presented its witnesses
15 for cross-examination at the hearing, to come here today and
16 for the first time say that they're willing to meet with
17 Staff overtime, around the clock, whatever you want to call
18 it, in order to develop the record after it is closed and
19 the ALJ has already issued its report. I think that is not
20 the way to do business. It is certainly not the way to
21 base your decision whether to grant Bell entry into the
22 in-region long distance.

23 The one point I would like to make is that
24 the Track A/Track B dichotomy, Judge Goldfield got that
25 right. We are on Track A. We have Brooks Fiber as a
facilities-based provider, however, there have been many

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2 requests for interconnection. However, they are not
3 providing service to residential ratepayers over its own
4 facilities or predominantly over its own facilities.

5 Even if Track B were applicable, you would
6 still have the problem of interim rates. And those rates
7 are subject to true up. And it just intuitively doesn't
8 make sense that you have rates subject to true up but
9 somehow they're cost-based rates.

10 Commissioner Graves, you talked about, well,
11 how long will that take to hold a hearing and determine
12 those rates. I can tell you Missouri is one of my states,
13 one of my other four states that I handle, and the Missouri
14 Commission issued an arbitration order which had interim
15 rates and immediately established a cost proceeding to
16 determine permanent rates. And that was done about the
17 first of the year. And they are to wrap that up this June,
18 I mean, if that gives you some sort of point of reference in
19 terms of whether it is going to be 30 days or five years.

20 CHAIRMAN GRAVES: Are they in the courts at
21 all?

22 MR. MORRIS: Sir?

23 CHAIRMAN GRAVES: Are they in the courts in
24 Missouri?

25 MR. MORRIS: This is at the Commission. I am
- - The permanent rate proceeding is obviously before the

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2 Commission.

3 CHAIRMAN GRAVES: The Missouri Commission.
4 Did anybody take their orders to the courts?

5 MR. MORRIS: Southwestern Bell - -
6 Southwestern Bell appealed the Missouri arbitration order.
7 Our position is they did that prematurely since neither MCI
8 nor AT&T have presented a contract to the Commission for its
9 review and approval.

10 But, as a point of reference, I would let the
11 Commission know that the Missouri Commission expects to wrap
12 up its permanent cost proceeding this summer.

13 And, again, we agree with the recommendation
14 of the Administrative Law Judge and concur in the comments
15 of AT&T and Sprint and would be happy to answer any
16 questions you all might have.

17 CHAIRMAN GRAVES: What is the status of MCI's
18 intentions for the Oklahoma markets? Have you entered into
19 negotiations with Bell? Are you seeking arbitration? Where
20 are we?

21 MR. MORRIS: We filed our application for a
22 CPCN last week and sent a letter to Southwestern Bell. We
23 hope and expect to negotiate an interconnection agreement
24 with them and avoid arbitration.

25 CHAIRMAN GRAVES: So?

MR. MORRIS: And that's where - -

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2 CHAIRMAN GRAVES: So what is your time line
3 then for best-case scenario being in the market offering
4 resold services?

5 MR. MORRIS: I'm going to say 1998. And
6 this, of course, as you well know, a lot of these dates are
7 a moving target. But at this point, I would say 1998.

8 CHAIRMAN GRAVES: What were the compelling
9 reasons that determine the timing of when you filed in
10 Oklahoma or indicated to Southwestern Bell your interest in
11 Oklahoma?

12 MR. MORRIS: It was staffing, more than
13 anything. As all three of you recall, I visited with you
14 all at one point and expressed a desire to arbitrate in
15 Oklahoma. Because of staffing problems, you know, that are
16 outside my control, we didn't have the resources to
17 arbitrate at the same time AT&T did. And - -

18 CHAIRMAN GRAVES: So there were some unique
19 circumstances to your situation at MCI as opposed to AT&T's
20 or anybody else's seeking to get into this business?

21 MR. MORRIS: Yeah. I can't speak to AT&T or
22 Sprint. Obviously they had the personnel here and were able
23 to arbitrate. We didn't at the time that I would have
24 liked.

25 CHAIRMAN GRAVES: Anything further from Mr.
Morris?

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2 VICE CHAIRMAN ANTHONY: Thank you.

3 MR. MORRIS: Thank you.

4 CHAIRMAN GRAVES: Mr. Gist.

5 Although, I must admit, I'm not sure there is
6 anything left you can say about Brooks that hasn't already
7 been said by everyone else here. Let me apologize for the
8 horrible experience you have had in Oklahoma. We are sorry
9 that you have had so many problems.

10 Part of the concern, I think, is that there
11 may be these kinds of difficulties that are out there and
12 I'm not sure why in some settings companies don't ever
13 hesitate to rush into the Commission seeking some sort of
14 relief from actions and we haven't seen to date anyway a
15 great deal of concern on the part of parties that said, wait
16 a minute, we are not being treated fairly here, we don't
17 seem to be able to move forward in the process and we need
18 the Commission to keep everybody to a good faith effort.
19 I'm hopeful that the situations are perhaps not as bad as it
20 has been represented by other parties. If it is, I think
21 the Commission stands ready to try and work through some of
22 these difficulties. The concerns are many. And what we are
23 seeing, I think, in many instances are just some difference
24 of opinion as to what is or isn't appropriate standards.
25 But we'll let you speak for Brooks now.

MR. GIST: Thank you, Mr. Chairman. I think,

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2 first of all, Brooks Fiber is happy to be here. And I think
3 that they do appreciate a lot of the cooperation they have
4 received particularly from the Commission Staff and the
5 Legal Staff. They have pushed as hard as they can to get
6 their approval. They are a certificated local exchange
7 carrier now. They were the first one in the state.

8 But, you know, now that they have the
9 paperwork in place, there is a lot of practical aspects to
10 this that have to be met. And that is where the road blocks
11 have occurred. And there are bottlenecks that, I think,
12 were obvious. They were bottlenecks that the Congress knew
13 existed.

14 And I think that's one of the reasons we are
15 here in the first place even talking about this filing is to
16 determine whether Southwestern Bell has met the requirements
17 of the statute and whether they should be allowed into this
18 long distance market. And why shouldn't they be in the
19 first place.

20 And I think if you want to talk about
21 competition, I think that we are - - well, basically we are
22 in support of the arguments you have heard before. I will
23 try not to repeat those. But if you want to talk about
24 competition, if you let Bell into this long distance market
25 prematurely, before they have met this competitive '
checklist, then you have lost a valuable incentive to make

1 lw-102

2 them cooperate with us. Where is their incentive once they
3 have that opportunity?

4 And you are talking about - - You know, I was
5 starting to feel sorry for them there for a while, this
6 poor, little old monopoly that has had control over
7 virtually - - I mean, I guess over all of the market in this
8 state for years and years. And yet now they're not being
9 treated properly again. And I submit that you have to take
10 into account - - You need to encourage these new entrants,
11 like Brooks Fiber, too, and you need to have incentives in
12 place just as the statute allowed, incentives for Bell to
13 cooperate and help us over these hurdles and through these
14 bottlenecks.

15 Let us get things that we don't have now. We
16 don't have meaningful collocation agreements. We don't have
17 any in place. We asked last June, we still don't have them
18 in place. We don't have that opportunity. Just having the
19 tariff on file is not sufficient.

20 That was one of the arguments that Bell
21 made. We have tariffs on file for residential service, but
22 we are not offering those, as Mr. Cadieux testified. Just
23 to have a tariff on file won't do it. It is not - -

24 CHAIRMAN GRAVES: And the reason being - -
25 The reason you are not offering residential service is a
business decision? Or you can't get to residential

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2 customers?

3 MR. GIST: It is a business decision in that
4 we can't offer it on our network because we don't have
5 access to Bell's unbundled loops.

6 CHAIRMAN GRAVES: I understand. I understand
7 all that. And my question is - - My question is, is it the
8 business plan to pursue residential services?

9 MR. GIST: The business - -

10 CHAIRMAN GRAVES: Or is it - - And that is
11 why you haven't pursued the unbundled loops?

12 MR. GIST: Mr. Cadieux testified that the
13 business plan and Brooks Fiber's intention is to pursue any
14 economically advantageous business, including residential
15 service. But it has to be done and they want to do it on
16 their own network. They're not in the resell basis. And
17 right now the only way they could do it would be on a resell
18 basis. And that is not economically feasible for them. It
19 is not advantageous for them to do it.

20 So to say that - - For Bell to say that they
21 have met the requirements of this Track A by saying, well,
22 there is Brooks Fiber, and they have got a tariff on file,
23 well, that is not what the statute was intended to do. And
24 the statute says it has to be available on a meaningful
25 basis and it has to be available on an - - and it has to be
provided predominantly or exclusively on our own network,

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2 which is clearly not the case. It is not even the case with
3 business customers. They only have twenty business
4 customers and most of that is not exclusively or
5 predominantly on their network. It is still dependent upon
6 Bell facilities. So - - And the residential isn't offered
7 at all. So they clearly haven't met the Track A
8 requirements under 271. They can't point to us as the
9 reason they have met that requirement. And you have heard
10 plenty about that. But it is not time for dessert is all I
11 can tell you.

12 As far as the - - this proposal that I just
13 heard about today for the Staff to go to St. Louis and meet
14 with Bell's people, now I'm in favor with the Staff getting
15 all the information they can. I'm in favor of all the
16 parties having access to all the information. I think it is
17 outrageous to think that at the eleventh hour you could say,
18 well, what you really ought to do, we had this hearing, I
19 didn't put my people up for cross-examination, I didn't give
20 anybody a chance to cross examine them, I didn't even put in
21 sworn testimony and I didn't get the results I wanted, but,
22 you know, what I would really like to do is to take the
23 Staff over to my office and woodshed them for a couple of
24 days. I mean that's, you know, outrageous to me.

25 I mean, we had an opportunity - - they had an
opportunity to present the facts to the Commission, and they

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2 chose to follow the path they took. And I think it's - - to
3 me it is crazy to do that. But if the Staff does want
4 information, and we would be more than happy to allow them
5 the same opportunity, my client is in St. Louis, they can
6 come there and find out what it is like to try to do
7 business as a new entrant, try to make these agreements with
8 Bell and try to make some progress there. And if they want
9 that information, that is what you would have to do. You
10 can't just get one version of it. You would have to get
11 people like Sprint, and AT&T and get all their viewpoints.

12 VICE CHAIRMAN ANTHONY: I would like for you
13 to state your position on that matter within the context of
14 the Commission Rules. I know you have practiced at the
15 Commission for a long period of time.

16 MR. GIST: Too long, perhaps.

17 VICE CHAIRMAN ANTHONY: This cause number.
18 This had an evidentiary hearing, correct me if I'm using the
19 wrong word, before the Administrative Law Judge. We have an
20 appeal to the Commissioners. But then again this is a
21 utility matter. Are we able to - - Would our rules allow us
22 to just say, well, we will overlook what went on before
23 Judge Goldfield, let's send the troops out and maybe we will
24 come up with a different opinion?

25 Do you think our rules allow? How do you
feel that suggestion stands relative to the Commission rules

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2 of normal practice?

3 MR. GIST: Well, I will admit that this is an
4 unusual proceeding from my experience. As you know, I do a
5 lot of other proceedings before you, but my position is that
6 the Commission is being asked to issue an order. Orders of
7 the Commission have to be based upon substantial evidence.
8 And it has to be - - You are still a court of record. And
9 you are a public body. And you have to conduct the
10 proceedings accordingly.

11 To me you would have to - - If you are going
12 to issue an order, it is going to have to be based upon
13 evidence. And certainly I don't think you could issue an
14 order that would be based upon information the Staff
15 obtained and then came to you and reported it to you somehow
16 where it wasn't even in the public record. I mean, that's -
17 - I don't think you can do that at all. I think your orders
18 have to be based upon the record, and you have to make an
19 evidentiary record. And we have approached the case as a
20 evidentiary proceeding. And whether Bell chose to proceed
21 as if it is some sort of hybrid, you know, public inquiry,
22 they made that choice, not us. And we don't agree with it.

23 And I would just say in closing, we think
24 that the action, what Bell has filed, is premature. We
25 would adopt the arguments that AT&T and the others set
forward. And I would point out just since you accepted some

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2 information earlier, and I know you want to be informed
3 about what is going on with this filing, I want you to know
4 that we are not the only ones to feel that it is premature.
5 A Motion to Dismiss the 271 filing at the FCC in Washington
6 was filed today by the Local Telecommunications Service - -
7 the Association for Local Telecommunications Service, called
8 ALTS. It's a trade group. Brooks Fiber is a member, other
9 companies are members. And they filed a Motion to Dismiss
10 it immediately on the grounds that it is premature and that
11 they have not met the statutory requirements for filing such
12 an action with the FCC.

13 I appreciate the opportunity to make the
14 comments.

15 CHAIRMAN GRAVES: Mr. Gist, you said earlier
16 that you had - - Brooks has been having collocation problems
17 since last summer? Is that a fair statement?

18 MR. GIST: Mr. Cadieux in his comments and
19 what he has advised me is they have filed a request to enter
20 into such a collocation agreement last June. And they still
21 don't have one, even one of them, completed. And, of
22 course, even when that's - - when the agreement is in place,
23 then they still have to go in and put the hardware in, they
24 have to test it and they have to see if the thing will work.
25 And that could take several months.

CHAIRMAN GRAVES: At which point do you reach

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2 sort of the end of your rope and you decide that you are
3 just not going to get any relief? Do you come back to the
4 Commission and say, look, they're not playing fair? Have
5 you reached that point yet?

6 MR. GIST: I don't know. Mr. Cadieux is here
7 and he could speak to it more than that.

8 CHAIRMAN GRAVES: Well, Mr. Cadieux can
9 speak. And I don't necessarily have a problem with that.
10 He is an attorney of record. And I'm just - - What I'm
11 trying to get a handle on here is that I want to make sure
12 that where - - Because we talked about incentives to
13 cooperate. And I'm not sure that we have done all that we
14 can to engender as much cooperation as is possible on both
15 sides in these processes. There are strategic implications
16 on everybody's parts for moving forward expeditiously or not
17 moving forward expeditiously. You know, there was a year
18 ago I heard, tomorrow, yesterday is not soon enough. Don't
19 go through RM 19. Do it now. You don't need those rules.
20 And we went ahead and implemented rules. And then all the
21 sudden we are hearing from folks who were suddenly, well, we
22 are not sure we are there yet. You know? And I'm just
23 wondering how much of that is the legitimate sort of
24 technical problems that nobody could ever anticipate,
25 because we have never done this before, versus, well, it is
kind of convenient to have problems. And I'm not going to